

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2010 MAR -8 P 3:26

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

JOEL D. CALDERON,

and

SANDRA M. ROMERO

Plaintiffs,

v.

ONEWEST BANK, F.S.B.,

and

BUCKINGHAM MORTGAGE CORP.,

and

KAMARAN HANIF,

and

RASIM S. TUGBERK,

and

HARSHALL AHARYA.

and

SURETY TRUSTEES, LLC,

Defendants.

Civil Action No. 1:10CV217

Removed from the Circuit Court
of Stafford County

(Case No. CL09001477-00)

(GBL/UFA)

NOTICE OF REMOVAL

Defendant OneWest Bank F.S.B. ("OneWest"), specially appearing, by counsel and pursuant to 28 U.S.C. §§ 1441 and 1446(a), hereby notices the removal of this civil action from the Circuit Court of Stafford County, Virginia, to the United States District Court for the Eastern

District of Virginia, Alexandria Division. In support of the Notice of Removal, OneWest states as follows:

I. STATEMENT OF ALLEGED FACTS

1. On or about December 7, 2009, Plaintiffs Joel D. Calderon and Sandra M. Romero filed a complaint in Stafford County, Virginia Circuit Court (the "Complaint") based on events related to a parcel of residential property in Fredericksburg, Virginia. In the Complaint, Plaintiffs assert the following claims:

Count I: Constructive Fraud

Count II: Fraud/Intentional Misrepresentation

Count III: Fraud/Concealment or Non-disclosure

Count IV: Negligent Misrepresentation

Count V: Negligence

Count VI: Civil Conspiracy

Count VII: Aiding and Abetting

Count VIII: Violation of Virginia Consumer Protection Act, Va. Code. Ann. § 59.1-196 *et seq.*;
Violation of the federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*;
Violation of the federal Regulation Z, 12 C.F.R. § 226;
Violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*; and
Violation of the federal Regulation X, 24 C.F.R. § 3500;

Count IX: Declaratory Judgment (Action to Quiet Title)

Count X: Injunctive Relief

2. Defendant OneWest has not yet been served with process pursuant to Va. Code § 8.01-285 *et seq.*, and no Proof of Service has been returned to the Circuit Court of Stafford

County. On its own initiative, counsel for OneWest obtained a copy of the Complaint from the Circuit Court of Stafford County on or around February 22, 2010.

3. Upon information and belief, no other defendants have been served with process pursuant to Va. Code §§ 8.01-285 *et seq.* and no other Proofs of Service have been returned to the Circuit Court of Stafford County.

II. GROUND FOR REMOVAL

4. This action is removable to federal court. Removal of this case is proper under 28 U.S.C. § 1441(a), which provides, in pertinent part, that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

5. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b). Specifically, this Court has original jurisdiction over this action because Count VIII (Violation of the federal Truth in Lending Act, federal Regulation Z, federal Real Estate Settlement Procedures Act and federal Regulation X) is a federal claim. See Compl. ¶¶ 92-102.

6. This Court has jurisdiction over the remaining counts (Counts I – VII, IX and X) pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b).

8. Removal of this case is timely under 28 U.S.C. § 1446(b) because this Notice of Removal was filed within thirty (30) days from the date the Complaint was served or otherwise received by OneWest, which was, at the earliest, on February 22, 2010. Again, OneWest does not believe it has been properly served with process. Accordingly, OneWest does not waive service, and reserves all rights to object to improper or lack of service.

9. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon or received by OneWest are attached hereto as **Exhibit 1**.

10. In accordance with 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court for Stafford County and served upon all parties of record promptly after filing of this Notice of Removal.

III. CONCLUSION

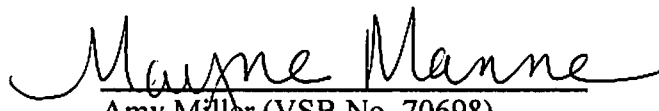
For the foregoing reasons, OneWest respectfully requests that this action be, and is hereby, removed to this Court, that this Court assume jurisdiction of this action, and that this Court enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Dated: March 8, 2010

Respectfully Submitted,

ONEWEST BANK, F.S.B.

By Counsel

A handwritten signature in cursive script, appearing to read "Amy Miller", is written over a horizontal line.

Amy Miller (VSB No. 70698)

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- and -

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2010, I hand-delivered the foregoing pleading with the Clerk of the Court, and sent complete copies via U.S. Mail to the following:

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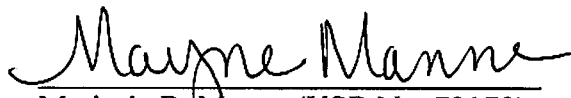
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